CLYDESIDE ACTION LAW GROUP[1] :

What are the aims and objectives of "the Law Group"?:

JUSTICE:

1) a due and just financial compensation for the victims and their families

2) a full recognition of the medical reality of asbestos-related diseases (including proper care and treatment)

3) an acknowledgment from the government that victims who have caught these insidious diseases caught them through no fault of their own but by the irresponsible and negligent behaviour of others (through their "acts or ommissions"), namely the asbestos industry and the employers who hired people to work in the full knowledge that they were exposing them to deadly substances which, on the balance of probability, might induce progressive and/or fatal illnesses

4) bringing the culprits to the attention of the public and eventually to stand trial on criminal charges.

One road to obtaining Justice will be to ensure that a victim's case is properly prepared THEN heard inside court. There is no precedent in Scotland. No victim of asbestosis or mesothelioma has ever got as far as this before[2]. Each case is settled out-of-court; and the one thing we can deduce from this fact is that 'out-of-court' settlements don't favour the victim. If these settlements did favour the victim then you can be sure they would stop immediately and that every case would be heard in court. And if they don't favour the victims and the victims are aware of this fact then surely in their own interests they should try to work out what it all amounts to, then stop it happening?

What can occur in court?

The lawyers for the victims (Pursuers) *won't start negotiations till the lawyers for the insurers (Defenders) admit liability.* In other words before we even begin, the case against is "proved"; the Defenders have admitted that they behaved irresponsibly and/or negligently, and therefore caused their employers to be poisoned. This "proof"

[1] If I remember correctly there were two of these meetings.

[2] However, we later heard this wasn't the case at all; cases has been heard in the heart of Glasgow, at the Sheriff Court

is submitted before the court hearing begins. This means all the work must be done in the preparation or precognition of the case. Once the lawyers get to court nothing new is to be advanced. Otherwise each side could go for an adjournment or new hearing or appeal or whatever else. In theory it is only a matter of doing arithmetic and working out scales of compensation.

Except that if we get to court the hope is that by some method or other a judge will become obliged to award a form of punitive/exemplary damages against the Defenders because of their culpability. It's happened in Australia and the USA and there be some in-road in this country. The lawyers cannot really predict what will happen in this case. How can they when they have never experienced it in court before? All they can work on is precedent and there is none; usually they look to England and Wales, but why not to the US or Australia? There is an interesting difference between Scottish Law and English/Welsh Law. In Scotland Common Law is in operation; this is the traditional Scottish method and ultimately it dates back to Roman Law. It is based on "principles". It does not operate by Statute. The Scottish legal system is based on Case Law as opposed to the Statute Law of England and Wales. Maybe the law on asbestos diseases is WAITING there for this very first case which will set some sort of yardstick for what is to follow. How do we know unless we look into it and give it a go?

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on the <u>obstacles to justice:</u>

points made by other victims to be taken into account, that there is no lawyer who gives a victim a fair crack of the whip

Every individual victim should write (or sign) a formal letter of complaint

(And suggested by L-------), that everybody attending the meeting should have a copy of Article 6, Council of Europe on Human Rights: the Fundamental Rights of the Individual (read twice and when it mentions criminals don't be misled, it also relates to everybody, including asbestos victims). It could be presented to individual lawyers and then ask them whether they are giving proper service to the clients.

learn from B's case

november, 92[1]

We have to learn more from B's case. We have to learn the correct questions to ask. [0ur objective must be to set our agenda as far as possible.] B was settled at £75,000 with the proviso that the CRU clawback would be paid by the Defenders. Therefore his original £60,000 was increased to close on £100,000 in the space of four days.

The old committee chairman was present along with a trades union official and they were also involved with P. whose case was settled out of court at £27,000. Their lawyer went directly to discuss the matter with them afterwards; but did not speak with CAA, distanced themself from CAA in fact. The psychology, they also wanted to impress their familiarity with the High Court proceedings, that they were "men of the world" who "knew the score" etc. - fairly typical arselicking mentality and reminiscent of run-of-the-mill trade union officials everywhere who want to ingratiate themself with management and ultimately regard the rank & file as mugs.

How much work did our members do for this case, for their lawyer? (speaking personally it was myself did B's mobility claim and I know that the Defenders lawyers were allowed to make use of B's heart condition to get his claim lowered; but when we won his mobility claim we demonstrated that asbesosis has a direct effect on the heart, etc. So did B's lawyer fight on that properly or did he allow the wool pulled over his eyes through ignorance and inefficiency?

There are people damaging CAA, giving victims a bad service, in effect they are ripping off victims in exactly the same way as the legal system, muscling in on their potential earning power. Each asbestos-victim is just another potential "compensation winner"

0ur presence in Edinburgh was important but could have been much more effective. We embarassed a lot of the bastards. 0r did we? Maybe they just laughed.

What planning did we do for the Court? We were much less prepared than we were for Pat McCrystal, which isn't surprising since we had only about 3 days (including the weekend). But we should have been there for 9 am, and had a protest out on the pavement; the whole 15 - 20 of us there in a group. It isn't any one person's

[1] a discussion document to put to the "Law Group" at CAA (which never got off the ground).

beyond

"fault". The group is too used to "follow my leader". There should also be placards to let the public know the issues (eg BRING THE GUILTY MEN TO TRIAL, ASBESTOS KILLERS STILL GO FREE; SCOTTISH DOCTORS WON'T DIAGNOSE ASBESTOS VICTIMS: LEGAL CONSPIRACY AGAINST ASBETOS VICTIMS etc etc).

What actually came out of last Friday's meeting on the legal side of things? Is anything being put into practice? C's case (number36) is next. What are we going to do then? Who is going to do what? Maybe we need set agendas even for these wee planning meetings. Because at the moment there's all sorts of talk about all sorts of things, but it's not doing much on solving the problems.

Did we have any way of stopping the lawyer taking B away on his own for ALL the negotations? What was to stop B saying he would like to have a moment's break to clear his mind and discuss the matter with his friends in the group. (If he is entitled to a Care Assistant then one of us could have been the Care Assistant and reported back every now and then etc)

Should B's first question to his lawyer have been: Can I see my doctor?

Remember the doctor was supposed to be a witness? The lawyer would immediately have to confess that the doctors weren't asked to come because nothing was going to happen. Even to get this admission at the very beginning would be worthwhile and would set part of the agenda from our side (how much of a farce the procedure is; the payment figure could all be settled in a pub in Glasgow without the rigmarole).

We have to get access to the medical evidence put forward by the Defenders' doctor as soon as possible. Then we can start demolishing their arguments about "other medical problems" such as heart conditions, chronic bronchitis, smoking, etc etc, and show how material it all is. We know that the negotiations hinge on the medical arguments to quite a great extent, yet we also know that the lawyers know very little and can be conned by the doctors; so how come we are letting them negotiate on something they know less about than us, sometimes they know next to nothing and actually seem *to trust* the doctors?

We should start insisting that everything is in writing so we have it on record and can check up on things. We have to get a breakdown on the list of items, 1 by 1, that go to make up the final figures of the settlement sum. We should pick up on lawyers letters to victims and start comparing notes, what they are saying, and be

prepared to challenge them and ask them what exactly they mean? Lawyers hate having to put such stuff down in wiriting (it's evidence and may be used against them!). Remember we were doing this a year ago? It's a good line of approach and could have paid off a long while ago if we had stuck to it. The group still doesn't follow things through. We still try to do far too much. Cut your suit according to the cloth. We can't begin to cover everything. If we could concentrate on certain issues we would fare much better and do more damage to the system; this jumping about from thing to thing is hopeless. Everything's a priority. So it becomes the case that nothing is.

We don't need one more bit of research into that office. It's time to act on what we have. We don't need any more credibility. We've got enough. We dont need any more information. We've got too much. We don't need any more contacts. We dont need any more people. We don't need anything more than we have already to start acting in a way that will change things in the most basic practical way. An army doesn't go into battle by stockpiling weapons. It has to actually use the weapons. The army has to reach the stage where it says we don't need any more guns, let's begin fighting.

The point I made about the Charter is an example. We can spend the rest of our life dealing with Charters. But it's always going to be down to us to actually do something about it. At what stage do we stop and say "We've got enough." The hard bit follows. Then what?

That's the question. To me the idea that we then "go to Parliament" is just silly. We've been "going to Parliament" for years. So what? What do we expect the MP's to do? What possibly can they do that they couldn't be doing right now? Don't tell me we're going to rely on them "to take up our case"! That's like a bad joke. Politically it's very naive.

As I say, we've had the munitions for a while but we still aren't going into battle, except in wee bits here and there. We've had some people on the run for the past couple of months but we're in the process of letting them escape. The authorities were in trouble in cases like 33, 8, McCrystal and a couple of others. But what what are we doing about it? We've let them off the hook.

Case 33 cracks the prescription test wide open; it also tosses a hand-grenade at the local authorities and their responsibilities both to occupational and environmental asbestos disease (the contamination of teachers and potentially of

children). We've also seen how it isn't just "history" but is still happening right now (St Sixtus in Drumchapel) So we could have attacked the Region for failing to prosecute that cowboy outfit of asbestos removers they use etc. The American and Australian research we used will beat every single regional and district authority in the country. And in the meantime show up how cowardly and ineffective the white-collar trade unions are.

Case 8 gets the medical authorities on unprofessional, prejudicial practices. Handling it is tricky. But we could cause a hell of a stink using it properly, showing the way the medical profession colludes with the government to do in terminal victims, and their families (at the same time showing the absolute necessity of PM's and perhaps of particle counts though particle counts will require legislation surely, a rewriting of the diagnostic sections of the 1985 regulations).

The Peter Boyle case highlights the unwillingness of the government (both local and national) to acknowledge the physical reality of asbestos disease - they would even use the word "breathlessness" to define what it will mean for somebody to be diagnosed mesothelioma. They don't admit the real suffering and the physical reality of progressive lung death, and continue to deny its effects on, for example, the oxygen and blood supply. The case also demonstrates how bad Scottish law is on *Effect of Death on Damages*.

The legal injustice is highlighted by Pat's case. But maybe also, and as with Geo Marwick, so too is the idea that there is an outside possibility that asbestos victims - even mesothelioma victims - can achieve a much better quality of life for the latter stages of their life, that society can start looking into ways of actually *treating* people, actually fucking helping and supporting them - eg. official research like they're doing in Western Australian, looking for the various ways of improving the health of victims (Moerman's diet and so on) hospices etc.

Going back to the Charter. Once we finally get to the point where we have "enough signatures"; that's the point where the real work BEGINS. I'm saying that at this early stage of the campaign (which is what the Charter is, an early stage) the real work will begin. Getting the Charter together and then getting people to sign it is only the START.

And right at this moment in time we have, in the four cases identified above, all the stuff available to work on four Major Campaigns.

Keeping the military metaphor going, a campaign is like a war. You organise around it. You start looking at all the questions raised by the issue (the individual cases) and work out in what way the victims have been got at, and in what way things can be changed so that it doesn't happen again. I name these four cases because in each and every one of them the CAMPAIGN not only started a while ago we have already achieved minor victories within them - like the "media battle" for instance, or getting members of the legal system to admit how fucking rotten it is, or getting a knowledgeable doctor to admit things are a nightmare. I rerpeat, we have all this already; yet we arent making use of any of it.

Etc etc

When we do get the statement ready and it gets launched it could be done as a sort of follow up to The Charter. It doesn't displace The Charter but gets used just as something that's come about afterwards. The one doesn't do away the other, that's the point. Both can work together.

0nset question; assessment question; reassessment questions (instead of every 3 years it should be six months). The 90 days Catch-22. etc. What else needs to be on the statement.

Time-bars and lapsed claims. You fight to get a diagnosis for years and then you get it and they start the time-bar stuff, or then you dont get a proper onset date, or you get barred for that 90 days.

It suits Defenders to award you on industrial asthma because you get less dough than asbestosis

Compulsory CT scans; DNA testing. Hostile patients and biopsies. Hostile patients and the chamber of horrors - that gift from the RAF which was originally intended to test healthy strong young men in high altitude training for flying planes. Now used to torture asbestos victims who are suffering progressive lung death. Why is the Royal still using this antiquated torture chamber when no other hospital stoops to such practice? Should we sue the entire Chest Clinic at the Royal? Is it legally possible? Should we get out the banner and have a demonstration? That's something we could be doing even before we've got the statement prepared. It could be a neat method of testing the ground and seeing the public and professional response. We'd just have to be careful. How come? Well, maybe it would be a problem if it wasn't handled right, in which case we should make a point of handling it right.

MAT's useless without 'pink form' external medical report; patients are being forced to fight what amounts to a fait accompli in terms of Corunna House based Schedule of Evidence. Plus heart/asbestos relationship - vascular/angina (research on alveoli papers etc). Lung cancer in the absence of asbestosis (Vize judgment; etc)

Then the family of asbestos victims; Mrs W Watkins (then son) Victims pass on disease. Environmental disease: why is it any general campaign on public health in Glasgow never ever refers to asbestos? We could go on. Save it for the next meeting and other people to do their own notes and questions.

described in such a way that the actual effects of the condition are somehow ignored or regarded as of 'minor' importance to his overall physical conbdition, a condition that is already assessed at ...% disabled. Having been diagnosed suffering from asbestosis he is here obliged to somehow prove that progressive disability is an integral part of his condition. Yet this is a medically attested fact. Asbestosis doesnt stop it's relentless progress when the person is removed from exposure. Mr ..... has already been assessed ...% disabled on his loss of faculty. And this was ..... years ago. In order to be diagnosed suffering from this particular prescribed industrial disease a patient must have provided clear and undisputed evidence to the adjudicating medical authority, as listed in the DSS pamphlet NI 226.

[1. a thorough history of substantial exposure to asbestos. 2. persistent bilateral basal crackles 3. radiological features of diffuse interstitial fibrosis in the lower halves of the lung fields; 4. impairment of the lung function consistent with these features.]

0ther factors should be mentioned here. The most recent figures on pneumoconiosis claims (1988) show that only 12% of all claims in the West of Scotland are successful. Yet the incidence of asbestos-related disease in this area is close to 8 times higher than the national average. It is accepted that diagnosis is not straightforward and the statistics mentioned give clear proof of the difficulty. But one especial difficulty for victims of asbestosis is also implicit in the statistics; when a claimant is finally diagnosed by the adjudicating medical authority, on a balance of probability it seems evident that he has been suffering from the disease for an undetermined period.

No one can say with certainty when the disease begins. DSS guidelines require radiological evidence of interstitial fibrosis but lung function changes precede radiological and clinical evidence and it isn't uncommon to hear crackles even when the X-ray is clear. Patients typically present with chest pains and chronic breathlessness long before their illness is finally diagnosed; they are <u>already</u> disabled; they are unable to walk distances, unable to do any physical exertion; unable to sleep without sitting up, unable to sleep for periods of more than 2 to 3 hours. Mr ..... has a history of chronic bronchtis (?, but probably) which wasnt helped by the fact that he used to be a smoker, but it is equally true that bronchitis

used to be *one of the typical misdiagnoses* made on asbestos-victims through a lack of knowledge on the subject. It is also the case that smoking has absolutely nothing to with asbestosis, although Dr ..... seems under the impression that Mr .....'s former smoking habits would have more affect on his health than the asbestosis; at the very least that's a matter of opinion; on the balance of probability it is highly unlikely (i.e. he is *already* fucking diagnosed asbestosis!).

Mr ..... has other physical disablements/illnesses (heart disease? athritis?) but we know that asbestos attacks every part of the body and there is an obvious relationship between respiratory disease and the heart etc. 0f the total asbestos-induced cancers, 80% are in the lungs, 10% are of the lining of the lungs and intestines, and 10% in other sites - particularly throat, intestines and stomach.
Mr ..... cannot walk any distance without severe discomfort; he is unable to perform any physical chore that demands exertion, his domestic life is severely restricted (he can no longer fulfil his marital status; sex has more less gone from his marriage because of this). He tried to keep working at his regular occupation of (insulation engineer/joiner/painter) for as long as he possibly could but was then forced to stop work on medical advice and advised to look for a light job. But nowadays for a man of his years and experience there are no 'light' jobs. In view of his heart and lung condition the sort of exertion required to walk could easily constitute a danger to his life, or if not would be likely to lead to a serious deterioration in his health.

Mr ..... has been diagnosed suffering from the prescribed industrial disease asbestosis. A direct effect of this progressive, degenerative disease is the inability to walk or do any physical exercise that causes exertion. 0n a balance of probability this is why he is now disabled and therefore unfit to work at his regular occupation, there is surely no question about this.

papers.

1) Lurching Flaws 2 the Asbestos Industry — an early pap
2) Talk for the Albion Workers (version delivered to other groups)
3) Paper for internal discussion only
4) Paper delivered at E.G.M.
   4A — additional notes for E.G.M.
5) Scottish Law & the Victims of Asbestos (published my name GLASGOW HERALD)
6) FIGHT FOR THE LIVING / Remember the dead (published pseudonymous oilworkers paper)
7) Press statement — delivered to TV cameras during demo at L. Provost & CITY COUNCIL CHAMBERS
8) Talk delivered at Public Meeting
9) early wee article for THE KEELIE
10 another one